IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7688 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAMBHAI NATHABHAI PATEL

Versus

NAVA NARODA GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 7688 of 1995

MR MC BHATT for Petitioner No. 1

MR BN RAVAL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petition and some other members are having

Tenaments in Parshwanath Co-op. Housing Society Ltd., Part-II. The society is registered under the Gujarat Co-op. Societies Act and the numbers of the Duplex houses of the 20 members are from 590 to 609 (both inclusive). These 20 members were issued notices whose water connection was disconnected by the respondent Taluka Panchayat and the District Panchayat, which is the subject matter of challenge in this petition.

2. It is the case of the petitioner that, originally, the society had provided bore pump and over-head tank. However, somewhere in the year 1985, the society decided to hand over all public amenities including the water supply by agreeing under an agreement with respondent No.1 and a resolution to that effect came to be passed and at the relevant time, the respondent No.1 was maintaining the said amenities.

2.1 The petitioner and other members of the society were deprived of water connection without any notice or intimation on 27th August 1995. However, when they made complaint to respondents Nos.1 to 3, none of the authorities have attended to their grievances.

3. This Court issued notice on 11th September 1995 and subsequently while admitting the matter on 18th September 1995, passed the following order:

> "Rule to be heard on 26.9.95. Mr.Raval, learned Advocate waives service of rule for the respondent No.1. D.S. is permitted for respondents 2 and 3.
>
> By way of interim relief, the respondent No.1 is directed to restore water supply latest by 19.9.95 to Duplex No.590 to 609 which is the subject matter of this Civil Application, subject to their depositing Rs.1200/- by each member with the Gram Panchayat respondent No.1. One week's time is allowed for depositing the said amount. However, they will furnish undertaking that they will deposit the said amount. This is subject to the final decision of the present Civil Application. S.O. to 26.9.95."

4. The respondent No.1 had filed its reply and contended that the construction is contrary to the sanctioned plan by the AUDA dated 30th March 1988 and the additional construction is without getting any permission from the authority. It is the case of the respondents that the said 20 Tenaments are illegal and therefore,

they are not given water connection. An affidavit-in-rejoinder is also filed by the petitioner. It is stated that the water connection is disconnected and Administrator is appointed by the State Government for administration of the Society.

5. Without entering into the question of legality of the construction, in my view, the water connection of the petitioner and other members could not have been disconnected, which is essential for every individual. The petitioner and other members were earlier granted water connection and the same could not have been disconnected without due process of law. Assuming that even if the construction is illegal, but in view of the Government Policy for regularisation of the illegal construction, the respondents are directed to regularise the construction and to continue the water connection which was directed by this Court after collecting the requisite charges from the petitioner and other members. In that view of the matter, the petition is allowed to the aforesaid extent and the respondents are restrained from disconnecting the water supply of the petitioner and other members and they may be continued with water connection for their Duplex Nos. 590 to 609 situated in Parshwanath Co-op. Housing Society Ltd., Part-II in the jurisdiction of respondent No.1 Panchayat. The respondents are also entitled to recover appropriate charges while regularising the construction of the petitioner and other members. Rule is made absolute to the aforesaid extent. No order as to costs.

(K.S. Jhaveri, J.)

Sreeram.